



## Rule Fact Sheet

August 11, 2010

### REVIEW OF RULES THAT DO NOT EXPIRE UNDER IC 13-14-9.5-1.1

LSA Document #10-268

#### Overview

The Sunset Statute, IC 13-14-9.5, requiring readoption of administrative rules on a seven year basis, was amended in 2001 with the addition of IC 13-14-9.5-1.1 specifying that certain rules do not expire but do require a notice of review to be posted in the Indiana Register for a 30 day comment period with a hearing to be conducted by the appropriate board as to the possibility of initiating rulemaking.

#### Citations Affected

The list of rules that do not expire and are under consideration of rule review in 2010 was posted in the Indiana Register on May 19, 2010. The list contains 327 IAC 5-4-3.1 regarding no potential to discharge for CAFOs concentrated animal feeding operations and 327 IAC 15-15 concerning the NPDES general permit for CAFOs. These rules are currently open in the rulemaking to revise the CAFO NPDES rules and will be repealed when that rulemaking is completed, but until then, these rules need to be readopted so as to prevent a gap in the administrative rules in case the CAFO NPDES rulemaking is not completed prior to the end of 2010.

#### Reason(s) for the Review of Rules

IC 13-14-9.5-1.1 describes types of rules that do not expire after seven years. These types of rules are: (1) rules required to receive or maintain delegation, primacy, or approval for implementation or operation of a program established under federal law; and (2) rules required to begin or continue receiving federal funding for implementation or operation of a program.

The Indiana Department of Environmental Management (IDEM) is required to publish a list of these rules that have been effective for seven years and request comment, in a 30 day comment period, on any specific rule that should be reviewed through the regular rulemaking process under IC 13-14-9. IDEM

must also provide notice of a public hearing before the Water Pollution Control Board (board) concerning this IC 13-14-9.5-1.1 rule review. IDEM must respond to all comments received during the comment period and provide the comments and responses to the board during the public hearing. The board, after considering the comments, responses, and testimony at the hearing, will direct IDEM on whether additional rulemaking actions must be started to address concerns raised to the board.

#### Benefits of the Review of Rules

The original Sunset Statute established the category of rules that do not expire and made those rules exempt from the Sunset requirements. The 2001 amendment to the Sunset Statute maintained the exemption for rules that do not expire but added the review requirement and opportunity for the board to direct IDEM to initiate rulemaking.

#### Description of the Review of Rules Project

The notice of rule review was posted in the Indiana Register on May 19, 2010 and can be found under DIN: 20100519-IR-327100268BNA along with the posted notice of public hearing found under DIN: 20100519-IR-327100268PHA. The 30 day comment period ended on June 18, 2010, without the receipt of any comments.

#### Scheduled Hearings

Public Hearing: August 11, 2010, at the WPCB meeting held at the Indiana Government Center South Building, Indianapolis, Indiana.

#### Consistency with Federal Requirements

IC 13-14-9.5 is a state statute. The exempted category of rules that do not expire and are not held to the requirements of IC 13-14-9.5 includes all the rules administered by IDEM that are required in order for the state to be approved to implement or operate a

program established under federal law.

**Board Activity**

At the public hearing before the board, the board has the opportunity to:

- (1) consider the comments received during the noticed comment period (no comments were received);
- (2) consider IDEM's responses to the comments (none);
- (3) consider testimony if provided by the public; and

- (3) direct IDEM to initiate rulemaking under IC 13-14-9 on specific rules if the board believes rulemaking is warranted.

**IDEM Contact**

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).